

§ 31.3121(a)(10)-1

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excluded from wages. The payment on November 1 was not excluded because Mrs. A worked for X on one day in October 1956. (Inasmuch as Mrs. A had attained age 62 in September 1956, the November 1 payment would have been excluded if Mrs. A had not performed any work for X in October 1956.)

[T.D. 6744, 29 FR 8309, July 2, 1964, as amended by T.D. 7373, 40 FR 30957, July 24, 1975; 40 FR 32831, Aug. 5, 1975]

§ 31.3121(a)(10)-1 Payments to certain home workers.

(a) The term “wages” does not include remuneration paid by an employer in any calendar quarter to an employee—

(1) For services performed after 1954 as a home worker who is an employee by reason of the provisions of section 3121(d)(3)(C) (see paragraph (d) of § 31.3121(d)-1), or

(2) For services performed after 1950 and before 1955 as a home worker who is an employee by reason of the provisions of section 1426(d)(3)(C) of the Internal Revenue Code of 1939, unless the cash remuneration paid in such quarter by the employer to the employee for such services is \$50 or more. The test relating to cash remuneration of \$50 or more is based on remuneration paid in a calendar quarter rather than on remuneration earned during a calendar quarter. If \$50 or more of cash remuneration is paid in a particular calendar quarter, it is immaterial whether the \$50 is in payment for services performed during the quarter of payment or during any other quarter.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example 1. A, a home worker, performs services for X, a manufacturer, in 1954 and 1955. In the performance of the home work A is an employee both in 1954 (by reason of section 1426(d)(3)(C) of the 1939 Code) and in 1955 (by reason of section 3121(d)(3)(C)). In March 1955, A returns to X articles made by A at home from materials received by A from X in 1954. X pays A cash remuneration of \$50 for such work when the finished articles are delivered. The \$50 includes \$10 which represents remuneration for home work performed by A in 1954. The entire \$50 is subject to the taxes.

Example 2. Assume that the same transactions occur, but that A is not subject in 1954 to licensing requirements under the laws of the State in which the home work is performed. A, therefore, does not perform home

work in 1954 as an employee of X by reason of section 1426(d)(3)(C) of the 1939 Code, and the \$10 paid in 1955 for such work is not remuneration for employment. The remaining \$40 for the home work performed in 1955 is remuneration for employment, but is excluded from wages by application of the \$50 cash-remuneration test.

(c) In the event an employee receives remuneration in any one calendar quarter from more than one employer for services performed as a home worker of the character described in paragraph (a) of this section, the regulations in this section are to be applied with respect to the remuneration received by the employee from each employer in such calendar quarter for such services. This exclusion from wages has no application to remuneration paid for services performed as a home worker who is an employee under either section 3121(d)(2) (see paragraph (c) of § 31.3121(d)-1) or section 1426(d)(2) of the 1939 Code, relating to common law employees.

(d) Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the \$50 cash-remuneration test is met. If the cash remuneration paid in any calendar quarter by an employer to an employee for services performed as a home worker of the character described in paragraph (a) of this section is \$50 or more, then no remuneration, whether in cash or in any medium other than cash, paid by the employer to the employee in such calendar quarter for such services is excluded from wages under this exception.

(e) For provisions relating to whether a home worker is an employee under section 1426(d)(3)(C) of the 1939 Code, see § 408.204 of Regulations 128; 26 CFR (1939) Part 408. See also § 31.3102-1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for services performed as a home worker of the character described in paragraph (a) of this section, and § 31.3121(a)-2, relating to the time of payment of wages for such services.